

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

WORKERS' COMPENSATION AGENCY

GENERAL RULES

Filed with the Secretary of State on May 13, 2013

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45(a)(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the director of the workers' compensation agency by section 205 of 1969 PA 317, MCL 418.205; section 48 of 1969 PA 306, MCL 24.248; and Executive Reorganization Order Nos. 1996-2, 1999-3, 2002-1, and 2003-1, MCL 445.2001, 418.3, 445.2004, and 445.2011)

R 408.43b and R 408.43i of the Michigan Administrative Code are amended as follows:

PART 3. INSURANCE

R 408.43b Employer individual self-insurer; compliance with bureau requirements; notice; additional time; certification; renewal application.

Rule 13b. (1) If the agency approves an initial application of an employer to be an individual self-insurer, then the approval shall be in writing. The approval letter shall contain the excess liability insurance terms, bond, letter of credit, and guaranties required by the agency as a condition of the self-insured authority. The employer has 30 days from the receipt of the agency's notice in which to comply with the requirements of the agency. The self-insured authority shall not become effective until the agency has received proof that all requirements of the agency for self-insured authority have been met.

(2) The employer may, at the discretion of the agency, be granted additional time to meet the requirements for the self-insured authority. An employer shall make a request for an extension of time in writing within the 30-day compliance period. If the agency does not receive proof that all requirements for the self-insured authority have been met within the time prescribed, then the application shall be considered withdrawn.

(3) The agency will issue a letter certifying self-insured authority to the employer when the employer meets the requirements of the agency. The self-insured authority for all approved employers expires on the designated renewal date, which shall not be more than 12 months from the effective date of the authority. A self-insured employer shall submit a renewal application (form 402R) and requested documents, including a current financial statement and loss information, to the agency 30 days before the expiration of the self-insured authority. Upon receipt of a renewal application, the authority shall be extended until denied or approved for an additional 12 months.

R 408.43i Group self-insurer's fund; board of trustees' power and duties; investment restrictions.

Rule 13i. To ensure the financial stability of each group self-insurers' fund, a board of trustees

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of each fund shall be responsible for all operations of the fund. A board of trustees shall be a group of members elected by the membership of the fund for stated terms of office. The majority of the trustees shall be owners or employees of members of the self-insurers' fund, but a trustee shall not be an owner, officer, or employee of a service company. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate a trustee as administrator or, in the alternative, hire an employee or designate an individual to act as the group fund administrator. The trustees may delegate to the administrator the duties they determine proper. The duties may include, but are not limited to, advising the board with regard to any of the following:

(i) Contracting with a service company.

(ii) Determining the premium charged.

(iii) Investing surplus monies, subject to the restrictions set forth in this rule.

(iv) Accepting applications for membership. However, the board of trustees remains the responsible party for the operation of the fund. The duties delegated to the administrator and all compensation to be paid to the administrator shall be reduced to writing, and a copy shall be provided to the agency with each annual group renewal application. The group fund administrator shall not be an owner, officer, or employee of a service company. The trustees shall purchase a fidelity policy covering the fund trustees, administrator, employees of the fund, and the service company in an amount sufficient to protect the assets of the fund. A copy of the fidelity policy will be provided to the agency with each annual renewal.

(b) Limit disbursements to payment and expenses of handling claims and administrative expenses necessary for operating the fund. The board of trustees shall also establish necessary accounts and accounting procedures for control and accurate financial reporting. Established accounting procedures shall provide accurate financial information for each open year individually with respect to revenue and expense until the year is closed out. The board of trustees shall maintain, and be responsible for, all records and documents relating to the formation and ongoing operation of the group self-insurance fund. If the board of trustees does not maintain the records in a responsible manner and in accordance with these rules, then the self-insured approval of the fund may be terminated by the director.

(c) Audit the accounts and records of the fund annually or at any time required by the agency. Audits shall be made by certified public accountants or by authorized representatives of the agency. The agency reserves the right to prescribe the type of audits to be made and the uniform accounting system to be used by the self-insurers' fund to enable the agency to determine the solvency of the group self-insurers' fund. Copies of financial audits prepared by certified public accountants shall be filed with the agency in Lansing within 180 days after the close of the fund year. Claim reserve audits used in support of surplus distribution requests shall be performed by auditors who meet the requirements of the agency relating to independence, report content, and timing.

(d) Not extend credit to individual members for payment of premium.

(e) Apply a penalty rate in excess of the normal premium to any risk that has unfavorable loss experience, if the member and the agency are notified in writing before the effective date of the change in rates.

(f) Not utilize any of the monies collected as premiums for any purpose unrelated to workers' compensation. Further, the board of trustees shall not borrow any monies from the fund or in the name of the fund without advising the agency of the nature and purpose of the loan and obtaining agency approval. The board of trustees may, at its discretion, invest any surplus monies not needed for immediate cash needs, but the investments shall be limited to United States government bonds, United States treasury notes, United States government agency issues, United States government-sponsored enterprises, investment share accounts in any savings and loan association and credit unions that have their deposits insured by a federal agency, and certificates of deposit issued by a duly chartered commercial bank. Deposits in savings and loan associations, credit unions, and commercial banks shall be limited to institutions in this state and shall not exceed the federally insured amount in any 1 account, except that the federally insured amount in any 1 account in a commercial bank may be exceeded if the account amount involved does not exceed either of the following factors:

(i) Five percent of the combination of surplus and undivided profits and reserves as currently reported for each bank in the state in the banking division annual report of the office of financial and insurance regulation.

(ii) Five hundred thousand dollars per institution. A group self-insurance fund shall not invest in mutual funds, except that investments in money market mutual funds of short-term duration which invest only in government agency issues, government-sponsored enterprises, and government bills, bonds, and notes will be allowed for short-term cash investment needs. As used in this paragraph, "short-term duration" means 180 days or less.

(g) The board of trustees of a group self-insurance fund, subject to the limitations set forth in subdivisions (h), (i), and (j) of this subrule, may, in its discretion, and upon contracting with a bank trust department or with a professional investment advisor registered with the securities and exchange commission under the investment advisors act of 1940, 15 U.S.C. '80B-3, invest monies not needed for immediate cash needs in corporate bonds and municipal bonds and common and preferred stock.

(h) Limit the combined holdings of corporate and municipal bonds to not more than 45% of the market value of the available investment portfolio. Corporate and municipal bonds must be (A) rated or better by at least 2 nationally recognized rating services. Holdings in any 1 corporation or municipality shall not be more than 5% of the total amount eligible for investment in corporate and municipal bonds as set forth in this subrule.

(i) Of the 45% of the market value of the investment portfolio available for investment in municipal or corporate bonds, 25% may be invested in common or preferred stocks. Common or preferred stocks shall be limited to publicly owned companies that trade on a United States regulated exchange. Mutual funds or bank pooled funds that invest in common or preferred stocks are permitted and shall be calculated as part of the percentage of market value available for investment in common and preferred stocks.

(j) Ensure that the professional investment advisor completes a compliance review of the investment portfolio on a quarterly basis. A copy of the investment review shall be provided to the fund and the agency within 30 days of the close of each quarter. The annual financial statements shall be audited by a certified public accountant and shall include a certification as to whether the fund has been in compliance with the requirements for investments. Failure to report on investments as required by this rule may result in withdrawal of the authority to invest in corporate and municipal bonds and/or common and preferred stocks.

(k) Any group fund found to have investments in vehicles other than as provided by this rule shall be given 30 days or a time period approved by the director to divest themselves of the investments. Failure to meet the divestiture requirement may subject the fund to further sanction by the director.